



P.O. Box 8468
Harrisburg, PA 17105-8468
September 17, 1997

Bureau of Air Quality

(717) 787-2030

Ms. Marcia Spink, Associate Director
Air Programs
U.S. EPA - Region III
841 Chestnut Building
Philadelphia, PA 19107-4431

RE: Final Rulemaking - Gasoline Volatility Requirements

Dear Ms. Spink:

The final gasoline volatility requirements regulation was approved by the Environmental Quality Board (EQB) on September 16, 1997. The regulation has been submitted to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees.

Enclosed are a copy of the final regulation and the Comment and Response document which responds to comments submitted to the EQB during the public comment period.

Thank you for submitting comments to the EQB on the proposed regulation. Your interest is greatly appreciated.

Sincerely,

Terry L. Black
Regulatory Development Section

RECEIVED
Air & Radiation Programs
Branch (3AT10)

SEP 22 1997

EPA, REGION III

Enclosures



FINAL RULEMAKING
GASOLINE VOLATILITY REQUIREMENTS

ENVIRONMENTAL QUALITY BOARD MEETING

SEPTEMBER 16, 1997

EXECUTIVE SUMMARY

Amendments to 25 Pa. Code Chapters 121, 126 and 139 Gasoline Volatility Requirements

The Department of Environmental Protection recommends amendments to 25 Pa. Code Chapter 121 (relating to general provisions), Chapter 126 (relating to standards for motor fuels) and Chapter 139 (relating to sampling and testing).

Summary of Proposal

The final regulation will limit the volatility of gasoline sold in the Pittsburgh-Beaver Valley Area during the ozone season. The final regulation imposes a Reid Vapor Pressure (RVP) limit on all gasoline marketed in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties. The final regulation also provides for federal reformulated gasoline (RFG) as an alternate compliant fuel. The final restrictions on fuel will be effective at the distributor level between May 1 and September 15 of each year beginning in calendar year 1998 and at the retail level between June 1 and September 15. The final regulation will affect all gasoline and gasoline blends marketed or exchanged in the affected counties.

Purpose of the Proposal

The Commonwealth is required to implement control strategies by December 31, 1997, to demonstrate that the Pittsburgh-Beaver Valley Area will achieve the National Ambient Air Quality Standard (NAAQS) for ozone. This regulation is one of several recommendations of the Southwestern Pennsylvania Ozone Stakeholder Working Group for demonstrating attainment with the NAAQS.

Affected Parties

Any Commonwealth agency, political subdivision, local government or private sector facility using gasoline will be affected by these regulations. All refiners, importers, distributors, resellers, carriers, wholesalers, purchasers, consumers, and retailers of gasoline will be required to comply with the regulatory provisions. There are approximately 1250 retail outlets in the seven county Pittsburgh-Beaver Valley Area.

Advisory Groups

The Department worked with the Southwestern Pennsylvania Ozone Stakeholder Working Group established by the Governor in the development of this control strategy. In addition, the Department discussed these regulations with the Air Quality Technical Advisory Committee (AQTAC). At its July 21, 1997 meeting, the AQTAC recommended adoption of the final regulations.

Public Comment and EQB Public Hearing

A public comment period of sixty-one (61) days was provided for the proposed regulation. The Air Pollution Control Act requires public hearings to be held in the areas of the state affected by air resource regulations. The Department held a public hearing in the Pittsburgh Area on June 3 for the purpose of accepting comments on the proposed amendments. The Department received nine (9) sets of comments on the proposal.

**NOTICE OF FINAL RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

**25 Pa. Code Chapters 121, 126 and 139
Gasoline Volatility Requirements**

Order

The Environmental Quality Board (EQB) by this Order amends 25 Pa. Code Chapter 121 (relating to general provisions), Chapter 126 (relating to standards for motor fuels) and Chapter 139 (relating to sampling and testing) as set forth in Annex A. The final regulation will limit the volatility of gasoline sold in the Pittsburgh-Beaver Valley Area during the ozone season.

This regulation will be submitted to the Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

The EQB approved the proposed amendments at its September 16, 1997 meeting.

A. Effective Date

These amendments will be effective upon publication in the Pennsylvania Bulletin as final rulemaking.

B. Contact Persons

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Compliance and Enforcement, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, telephone (717) 787-1663; or M. Dukes Pepper, Jr., Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, telephone (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This final rule is available electronically through the Department of Environmental Protection Web Site (<http://www/dep.state.pa.us>).

C. Statutory Authority

This action is being taken under the authority of Section 5 of the Air Pollution Control Act, 35 P.S. §4005, which grants to the EQB the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. Background and Summary of the Amendments

This regulation establishes controls on the volatility of gasoline sold in the Pittsburgh-Beaver Valley Area as part of the Commonwealth's demonstration of attainment of the health-based ozone standard. Based on 1991 through 1994 monitoring data, the EPA, on July 19, 1995, determined that measured air quality in the area met the ozone National Ambient Air Quality Standards (NAAQS) and that the statutory requirement for an attainment demonstration (and other related requirements) was no longer applicable. However, there were a number of ozone exceedances in 1995 that resulted in a violation of the ozone NAAQS. In response to this violation, the Governor formed the Southwestern Pennsylvania Ozone Stakeholder Working Group to review the ozone problem and recommend additional emission control programs.

In response to the 1995 ozone NAAQS violation, EPA, on June 4, 1996, published a finding in the Federal Register (61 F.R. 28061 et seq.) that the area was no longer attaining the ozone standard and reinstated the applicability of the attainment demonstration and related requirements. These requirements are those established by Part D of Title I of the Clean Air Act, Sections 182(b) and 172(c)(9), 42 U.S.C. §§7511a(b) and 7502(c)(9). EPA recognized the work of the Southwestern Pennsylvania Ozone Stakeholder Working Group when it published the schedule for completion of the attainment demonstration for the Pittsburgh-Beaver Valley Ozone Nonattainment Area. The schedule was a result of a letter submitted by the Commonwealth. Under the schedule, by December 31, 1997 the Commonwealth must submit to EPA, as a SIP revision, final regulations establishing the emission controls contained in Annex A. In the event the Commonwealth fails to meet this schedule, the sanctions established by the Clean Air Act will go into effect early in January, 1998. These sanctions include 2 to 1 emission offsets and (after six months) the loss of federal highway funds in the Pittsburgh-Beaver Valley Ozone Nonattainment Area.

This regulation is one of four core emission reduction strategies necessary for the demonstration of attainment of the ozone standard. The four strategies are:

1. minor changes to the proposed low-enhanced (de-centralized) motor vehicle emission inspection and maintenance program;
2. the second phase (55% reduction) of the Ozone Transport Commission NO_x Memorandum of Understanding;
3. clean gasoline proposal; and
4. Stage II vapor control requirements.

These four core strategies were recognized by the Southwestern Pennsylvania Ozone Stakeholder Working Group as necessary to achieve the ozone standard in the Pittsburgh-Beaver Valley Area and this proposal was recommended by the Stakeholder Group. Other mandatory strategies were considered by the Stakeholder Group, but were found to be

either unreasonable or impracticable. In addition, the Department discussed these regulations with the Air Quality Technical Advisory Committee (AQTAC). At its July 21, 1997 meeting, the AQTAC recommended adoption of the final regulations.

The Department is adding definitions for the terms "compliant fuel", "federal reformulated gasoline or RFG", "importer", "low RVP gasoline", "Pittsburgh-Beaver Valley Area", "Reid vapor pressure". In addition, the Department is modifying the definition of "distributor".

This regulation adds a new Subchapter C, Gasoline Volatility Requirements, to Chapter 126 of the Department's air resource regulations. Section 126.301 (relating to compliant fuel requirement) provides that this new subchapter applies to the sale of gasoline in the Pittsburgh-Beaver Valley Area between May 1 and September 15 of each calendar year. Section 126.301 also imposes a Reid vapor pressure (RVP) limit on all gasoline marketed in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties. The regulation provides for federal reformulated gasoline (RFG) as an alternate compliant fuel. The restrictions on fuel would be effective between May 1 and September 15 of each year beginning in calendar year 1998 for all refiners, distributors, resellers, carriers, and wholesalers. The restrictions would be applicable between June 1 and September 15 of each year for all wholesale purchaser consumers and retailers of gasoline. Finally, if RFG is required by federal law to be sold in the Pittsburgh-Beaver Valley Area, the requirements of this regulation are terminated.

The requirements of Section 126.302 (relating to labeling requirements) for gasoline dispensed at any retail outlet in the Pittsburgh-Beaver Valley area have been deleted in response to comments received.

Section 126.303 (relating to recordkeeping and reporting) requires each entity in the gasoline dispensing network, beginning with the terminal owner, to maintain records of the date, name and address of transferor and transferee, the location and volume of gasoline being sold or transferred, and a statement certifying that the gasoline meets the RVP or RFG requirements. These records must be retained for at least two years from the date of sale or transfer of the compliant fuel.

Section 126.304 (relating to compliance and test methods) and the amendments to Chapter 139 (relating to sampling and testing) establish the compliance test methods for evaluating fuel volatility and Reid vapor pressure. These test methods are consistent with the requirements established by the Environmental Protection Agency.

E. Summary of Comments and Responses on the Proposed Rulemaking

Comments were received from petroleum industry representatives, EPA and the Independent Regulatory Review Commission (IRRC). The comments from the petroleum industry and the IRRC suggested that the program implementation dates be changed to be

consistent with the Federal fuel program dates and that the pump labeling requirements be deleted. Changes were made in response to these comments altering the program start dates and deleting the pump labeling provisions.

Other comments from the industry suggested that the prohibition against mixing of complying and noncomplying fuels could prohibit blending to correct off-specification gasoline. Noncomplying fuel should not be in the area during the control period, and these requirements have not been changed in the final rulemaking. A commentator indicated that the proposed regulation requires the segregation of low volatility gasoline and RFG and will prohibit the mixing of RFG and low volatility gasoline in the pipeline or storage and may keep RFG from the market. The federal definition of RFG prevents the mixing of a fuel certified as RFG with any non-RFG gasoline. No change was made in response to this comment. A commentator suggested that industry codes be allowed to identify gasoline in addition to the other identifiers. The final rulemaking provides for use of appropriately identified product codes. Several commentators questioned whether there would be a test tolerance of 0.3 psi allowed for enforcement purposes. This is an implementation issue based on the analysis technique, and the final regulation does not specifically provide a testing tolerance. However, testing and analysis are conducted in a manner consistent with federal requirements.

EPA made a number of comments related to the proposed regulation. One comment related to possible federal preemption of the RFG provisions in the regulation. Based on further discussions with EPA, this is an issue that can be addressed by EPA in its review and approval of the SIP. EPA also questioned the level of emission reduction credits the Department would claim because of the difference in reductions which occur with the use of the different complying fuels. There is a slight difference in evaporative emission reductions between the RFG and low volatility fuels, but the overall emission reductions including evaporative and tailpipe emissions are actually less with the higher volatility RFG than with the low volatility gasoline. No changes have been made to the regulation to address EPA's comments.

One industry commentator, in response to the Department's request for comment regarding a "ramp-up" interval, suggested that the regulation should not specify details of getting complying fuel into the market, but that the matter should be left to the industry to comply by the required deadlines. No provisions are contained in the final rule regarding a "ramp-up" period.

One industry commentator, in response to the Department's request for comment regarding the generation of emission reduction credits (ERCs) for use of RFG, suggested that such a program would be too complex and costly to implement and advised against a program. No specific provisions are contained in the final rule regarding the generation of (ERCs).

One industry commentator described an implementation/enforcement policy which the Department should consider. Implementation policy will be developed after the final rule is promulgated. Enforcement will be consistent with the Department's *Thoughtful and Thorough Enforcement Policy* dated September 21, 1995.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulation.

Benefits

The approximately 2.8 to 3 million people in the seven counties affected by this regulation will benefit from the sale of cleaner burning fuel. Both low RVP gasoline and RFG have been proven to reduce emissions of volatile organic compounds (VOC), compounds that are instrumental in the formation of ground level ozone. In addition, RFG lowers emissions of air toxics, nitrogen oxides, carbon monoxide and benzene.

Compliance Costs

There will be an increased cost to the regulated community to produce compliant fuel. Both low RVP and RFG cost more to make than conventional gasoline. It is anticipated that the increased cost of production the refiners experience will be passed onto the consumer and, consequently, the regulated community will not bear the increased cost. Estimates regarding the price per gallon increases vary depending on a number of factors, but generally the increase has been documented to be 1 to 2 cents per gallon for low RVP and 3 to 5 cents per gallon for RFG. This cost, based on an estimate of the number of gallons sold in a 5 month period in the 7 county area, could range from \$4 million to \$20 million each ozone season.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community with understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing regional compliance assistance program.

Paperwork Requirements

There will be additional recordkeeping and reporting costs for any entity that sells or transfers gasoline intended for use in the seven-county Pittsburgh-Beaver Valley Area during the ozone season. Each transferor or transferee will be required to alter its current recordkeeping documents to include the information required by this regulation.

G. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), the Department submitted a copy of this proposed amendment on April 21, 1997, to the Independent Regulatory Review Commission and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with Section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

In preparing this final-form regulation, the Department has considered the comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this preamble. The Committees did not provide comments on the proposed rulemaking.

This final-form regulation was (deemed) approved by the House Environmental Resources and Energy Committee on _____ and was (deemed) approved by the Senate Environmental Resources and Energy Committee on _____. The Commission met on _____ and (deemed) approved the regulation in accordance with Section 5(c) of the Act.

I. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under Sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code*, §§7.1 and 7.2.

(2) A public comment period was provided and a public hearing held as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 27 *Pennsylvania Bulletin* 2130 (May 3, 1997).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Order and are reasonably necessary to achieve and maintain the national ambient air quality standard for ozone.

J. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(1) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code*, Chapters 121, 126 and 139, are amended to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(2) The Chairman of the Board shall submit this Order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(3) The Chairman shall submit this Order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(4) The Chairman of the Board shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(5) This Order shall take effect immediately.

BY:

James M. Seif
Chairman
Environmental Quality Board

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

COMPLIANT FUEL-LOW RVP GASOLINE OR RFG.

* * * * *

Distributor—[For purposes of the oxygenated fuels program, a] A person who transports, stores or causes the transportation or storage of gasoline at any point between A REFINERY, an oxygenate[d] blending facility or terminal and a retail outlet or wholesale purchaser-consumer's facility. The term distributor includes A REFINERY, an oxygenate blending facility or a terminal.

* * * * *

IMPORTER—A PERSON WHO IMPORTS GASOLINE OR GASOLINE BLENDING STOCKS OR COMPONENTS FROM A FOREIGN COUNTRY INTO THE UNITED STATES.

* * * * *

LOW RVP GASOLINE—GASOLINE THAT HAS AN RVP OF 7.8 POUNDS PER SQUARE INCH OR LESS AS DETERMINED IN ACCORDANCE WITH THE APPROPRIATE SAMPLING AND TESTING METHODOLOGIES IN 40 CFR PART 80, APPENDIX E (RELATING TO TEST FOR DETERMINING REID VAPOR PRESSURE (RVP) OF GASOLINE AND GASOLINE-OXYGENATE BLENDS).

* * * * *

PITTSBURGH-BEAVER VALLEY AREA—THE SEVEN-COUNTY AREA COMPRISED OF THE FOLLOWING PENNSYLVANIA COUNTIES: ALLEGHENY, ARMSTRONG, BEAVER, BUTLER, FAYETTE, WASHINGTON AND WESTMORELAND.

* * * * *

RFG—FEDERAL REFORMULATED GASOLINE—GASOLINE THAT MEETS THE REQUIREMENTS FOR RFG AS SPECIFIED IN 40 CFR PART 80 SUBPART D (RELATING TO REFORMULATED GASOLINE).

RVP—REID VAPOR PRESSURE—THE MEASURE OF PRESSURE EXERTED ON THE INTERIOR OF A SPECIAL CONTAINER AS DETERMINED BY THE APPROPRIATE METHODOLOGIES IN 40 CFR PART 80 APPENDIX E.

* * * * *

CHAPTER 126. STANDARDS FOR MOTOR FUELS

(Editor's Note: Sections 126.301–126.305 are new and are printed in regular type to enhance readability.)

SUBCHAPTER C. GASOLINE VOLATILITY REQUIREMENTS

Sec.

- 126.301. Compliant fuel requirement.
- [126.302. Labeling requirements.]**
- 126.30[3]2. Recordkeeping and reporting.
- 126.30[4]3. Compliance and test methods.

§ 126.301. Compliant Fuel Requirement.

(a) This subchapter applies to gasoline which is sold or transferred into or within the Pittsburgh-Beaver Valley area during the period May 1 through September [30] 15, 1998, and continuing every year thereafter.

(b) No refiner, importer, distributor, reseller, TERMINAL OWNER AND OPERATOR OR carrier, [WHOLESALE PURCHASER-CONSUMER OR RETAILER] may:

(1) Sell, exchange or supply gasoline that is not a compliant fuel during the period described in subsection (a).

(2) Blend, mix, store or transport or allow blending, mixing, storing or transporting of compliant fuel with noncompliant fuel during the period described in subsection (a).

(c) NO RETAILER OR WHOLESALE PURCHASER-CONSUMER MAY SELL, EXCHANGE, OR SUPPLY GASOLINE THAT IS NOT A COMPLIANT FUEL DURING THE PERIOD JUNE 1 THROUGH SEPTEMBER 15, 1998, AND CONTINUING EVERY YEAR THEREAFTER.

(d) If RFG is required by operation of Federal law to be sold in the Pittsburgh-Beaver Valley, this subchapter no longer applies after the date that RFG is required to be sold.

[§ 126.302. LABELING REQUIREMENTS.

(A) RETAILERS ARE RESPONSIBLE FOR COMPLIANCE WITH THE LABELING REQUIREMENTS OF THIS SECTION.

(B) DURING THE TIME PERIOD DESCRIBED IN § 126.301(a) (RELATING TO COMPLIANT FUEL REQUIREMENTS), EACH GASOLINE DISPENSER FROM WHICH A COMPLIANT FUEL IS DISPENSED AT A RETAIL OUTLET IN THE PITTSBURGH-BEAVER VALLEY AREA SHALL HAVE AFFIXED A LEGIBLE AND CONSPICUOUS LABEL WHICH CONTAINS THE FOLLOWING STATEMENT: "FROM MAY 1 THROUGH SEPTEMBER 30, THE GASOLINE DISPENSED FROM THIS PUMP IS A CLEANER-BURNING BLEND, DESIGNED TO REDUCE GROUND-LEVEL OZONE, OR SMOG, IN THE PITTSBURGH AREA. FOR MORE INFORMATION ABOUT AIR QUALITY AND CLEAN FUELS, CONTACT THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION AT (717) 787-9702."

(C) THE STATEMENT DESCRIBED IN SUBSECTION (B) SHALL BE IN BLOCK LETTERS OF AT LEAST 20-POINT (3/16") BOLD TYPE AND IN A COLOR THAT CONTRASTS WITH THE BACKGROUND.

(D) THE LABEL SHALL BE PLACED ON THE UPPER 2/3 OF THE VERTICAL SURFACE ON EACH SIDE OF THE DISPENSER WITH GALLONAGE AND PRICE METERS.]

§ 126.30[3] **2.** Recordkeeping and reporting.

(a) Beginning with the terminal owner or operator who sells or transfers gasoline intended for use in the Pittsburgh-Beaver Valley area during the period described in § 126.301(a) (relating to compliant fuel requirements), each time the physical custody of or title to a shipment of gasoline changes hands, other than when gasoline is sold or transferred for use in motor vehicles at a retail outlet or wholesale purchaser-consumer's facility, the transferor shall provide to the transferee a copy of the record described in this subsection. This record shall legibly and conspicuously contain, at a minimum, the following information:

(1) The date of the sale or transfer.

(2) The name and address of the transferor.

(3) The name and address of the transferee.

(4) The location of the gasoline at the time of transfer.

(5) The volume of gasoline which is being sold or transferred.

(6) A statement **OR GRADE CODE** certifying that the gasoline has an RVP of 7.8 pounds per square inch or less per gallon or is certified as RFG. If the gasoline is certified as RFG, each invoice, loading ticket, bill of lading, delivery ticket and other document that accompanies a shipment of RFG shall contain a statement from the refiner that certifies this fact.

(b) A person who transports, stores or sells compliant fuel that is intended for use in the Pittsburgh-Beaver Valley area during the period described in § 126.301(a), shall segregate the compliant fuel from noncompliant fuel and **[SHALL ACCOMPANY THE COMPLIANT FUEL BY]** the documentation described in subsection (a)[,] **SHALL ACCOMPANY THE COMPLIANT FUEL** at all times.

(c) Each person in the gasoline distribution network shall maintain records containing the compliance information listed in subsection (a). These records shall be retained for at least 2 years from the date of the sale or transfer of compliant fuel.

§ 126.30[4]3. Compliance and test methods.

(a) Compliance with the 7.8 pounds per square inch RVP standard shall be determined by use of the sampling and testing methods specified in this section. Any sampling or testing of gasoline required by this chapter shall be accomplished as follows:

(1) Sampling of gasoline for the purpose of determining compliance with this subchapter shall be conducted in accordance with 40 CFR Part 80, Appendix D (relating to sampling procedures for fuel volatility).

(2) Testing of gasoline for purposes of determining compliance with this rule shall be conducted in accordance with 40 CFR Part 80, Appendix E (relating to test for determining Reid Vapor Pressure (RVP) of gasoline and gasoline-oxygenate blend).

(b) RFG shall be certified and tested in accordance with the requirements listed in 40 CFR Part 80 Subpart D (relating to reformulated gasoline).

CHAPTER 139. SAMPLING AND TESTING

Subchapter A. SAMPLING AND TESTING METHODS AND PROCEDURES

GENERAL

§ 139.4. References.

The references referred to in this subchapter are as follows:

* * * * *

(18) "SAMPLING PROCEDURES FOR FUEL VOLATILITY," 40 CFR PART 80, APPENDIX D (RELATING TO REFORMATED GASOLINE).

(19) "TESTS FOR DETERMINING REID VAPOR PRESSURE (RVP) OF GASOLINE AND GASOLINE-OXYGENATE BLENDS," 40 CFR PART 80, APPENDIX E

(RELATING TO TEST FOR DETERMINING REID VAPOR PRESSURE (RVP) OF GASOLINE AND GASOLINE-OXYGENATE BLENDS).

STATIONARY SOURCES

§ 139.14. Emissions of VOCs.

* * * * *

(b) The following are applicable to tests for determining the emissions of VOCs:

* * * * *

(8) TEST METHODS FOR THE DETERMINATION OF RVP IN GASOLINE SHALL BE IN ACCORDANCE WITH THE PROCEDURES IN 40 CFR PART 80, APPENDIX E (RELATING TO TEST FOR DETERMINING REID VAPOR PRESSURE (RVP) OF GASOLINE AND GASOLINE-OXYGENATE BLENDS).

Gasoline Volatility Requirements

Comment and Response Document

July 10, 1997

Bureau of Air Quality

List of Commentators:

1. Mr. Michael A. Vandenberg
American Refining Group
2010 William Pitt Way
Pittsburgh, PA 15238
2. Mr. F. M. Anderson,
Exxon Company, U.S.A.
P.O. Box 2180, Suite 2659D
Houston, TX 77252-2180
3. Ms. Gretchen A. Wendtland
Measurement & Quality Control Engineer
Buckeye Pipe Line Company
5002 Buckeye Road
Emmaus, PA 18049
4. Ms. Marcia Spink, Associate Director
Air Programs
U.S. EPA - Region III
841 Chestnut Building
Philadelphia, PA 19107-4431
5. Mr. Robert J. Schaefer
Amoco Petroleum Products
Mail Code 1302
200 East Randolph Drive
Chicago, IL 60601-7125
6. Mr. Eugene Barr
Executive Director
Associated Petroleum Industries of Pennsylvania
240 North Third Street
Harrisburg, PA 17108
7. Jerome Moos, Director
Economics and Planning
United Refining Company
Box 780
Warren, PA 16365

8. Mr. Sarosh J.H. Manekshaw, Director
Environmental, Safety and Health Affairs
Pennzoil Company
Pennzoil Place
P.O. Box 2967
Houston, TX 77252-2967
9. Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
Commonwealth of Pennsylvania
333 Market Street
14th Floor
Harrisburg, PA 17101

Comments and Responses

1. **Comment:** The implementation time frame for the regulation should be changed so that the dates are consistent with the Federal low vapor pressure gasoline season. Specifically, for terminals and others in the fuels distribution system, the compliance season should be May 1 through September 15, and June 1 through September 15 for retail outlets and wholesale purchaser-consumers. *(Commentators 1, 2, 3, 5, 6, 7, 8 and 9)*

Response: The Department agrees with this comment, and has changed Section 126.301 accordingly.
2. **Comment:** The commentator suggested changing the start of the regulatory season for retail outlets to June 15. *(Commentator 3)*

Response: In order to be consistent with the Federal low vapor pressure program, the start of the regulatory season for retailers and wholesale purchaser consumers will be June 1, as described in Comment 1, above.
3. **Comment:** Section 126.302 (regarding labeling of retail pumps) should be deleted. Labeling of retail pumps may cause undue confusion and questions from consumers and would be burdensome. *(Commentator 2, 5, 6, 8 and 9)*

Response: The Department agrees with this comment and has deleted Section 126.302.
4. **Comment:** The statement in section 126.301 (b)(2) that prohibits parties from "...blending, mixing, storing, or transporting of compliant fuel with non-compliant fuel..." during the compliance period prohibits the blending of additional low RVP gasoline to fix an off-specification tank. Blending should be allowed as long as the resulting blend meets the specifications. *(Commentator 3)*

Response: The Department did not make the suggested change. Allowing noncompliant fuel to be blended, or mixed with complying fuel would unnecessarily complicate enforcement efforts. Further, non-compliant fuel should not be in the area during the control period.
5. **Comment:** Buckeye Pipe Line Company does not believe that section 126.303 (a)(6) is workable. Section 126.303 (a)(6) reads, "A statement certifying that the gasoline has an RVP of seven and eight-tenths (7.8) pounds per

square inch or less per gallon or is certified as federal reformulated gasoline (RFG). If the gasoline is certified as federal RFG, each invoice, loading ticket, bill of lading, delivery ticket, and other document that accompanies a shipment of RFG shall contain a statement from the refiner that certifies this fact."

Buckeye Pipe Line does not certify batches of gasoline prior to delivery. Rather, the Buckeye requires certification for all batches that are shipped in its fungible system (Philadelphia and New York Harbor origin). Buckeye does not feel that it can certify batches of gasoline.

In addition, the Buckeye recommends that grade codes be used in lieu of the certification statement mentioned in section 126.303 (a)(6) on the product transfer ticket. Grade codes are maintained for each type of product moved in the system. For example, Grade 022 (VOC Conv 87) is 7.8 max psi RVP, 87 octane gasoline, Grade 405 (VOC RFG 93) is 8.3 max psi RVP, 93 octane reformulated gasoline.

Buckeye proposes changing 126.303 (a)(6) to "A statement or grade code indicating ~~certifying~~ that the gasoline has an RVP of seven and eight-tenths (7.8) pounds per square inch or less per gallon or meets the federal requirements for is ~~certified as federal reformulated gasoline (RFG). If the gasoline is certified as federal RFG, each invoice, loading ticket, bill of lading, delivery ticket, and other document that accompanies a shipment of RFG shall contain a statement from the refiner that certifies this fact.~~" (Commentator 3)

Response: The Department believes that the use of grade codes is acceptable and has amended section 126.303 (a)(6) accordingly. The Department cannot agree to the other changes suggested. Certification of fuel is an extremely important issue, and necessary to ensure the integrity of the program. Buckeye may not certify its shipments, but the refiner or originator of the gasoline should provide the proper paperwork to fulfill the obligations of this section. If anyone in the system chooses to provide federal RFG to the Pittsburgh-Beaver valley area, then all the federal certification and paperwork requirements apply.

6. Comment: The wording of the last sentence in section 126.303 (a)(6) (*If the gasoline is certified as federal RFG, each invoice, loading ticket, bill of lading, delivery ticket, and other document that accompanies a shipment of RFG shall contain a statement from the refiner that certifies this fact.*) implies that RFG and low RVP gasoline cannot be mixed. If the two

products must remain segregated, then Buckeye Pipe Line will likely be capable of only providing either RFG or low RVP gasoline.

(Commentator 3)

Response: Under federal law, RFG cannot be mixed with any other gasoline, and still be sold as RFG. If it is mixed, the RFG is required to be downgraded to conventional gasoline. The only way that such a product would then be, for the purposes of this regulation, a compliant fuel, would be if the 7.8 psi RVP specification were still met. If the gasoline started out as RFG, it is unlikely that the gasoline would meet the 7.8 psi requirement. Therefore, it was the Department's intent to specify that if RFG is shipped, it must meet all federal RFG requirements.

7. **Comment:** A test tolerance of 0.3 psi should be applied downstream (i.e. all locations past the refinery gate) when determining compliance for Pittsburgh gasoline? Commentator 5 requested that the downstream test tolerance be explicitly stated in the regulation. *(Commentators 3, 5, 6, 8 and 9)*

Response: The regulation incorporates the federal testing procedures into the regulation. It is the Department's intent to run an RVP compliance and enforcement policy that is consistent with the federal enforcement program.

8. **Comment:** Pennsylvania may be preempted from adopting regulations relating to federal reformulated gasoline (RFG). Section 211 (c)(4)(C) of the Clean Air Act of 1990 prohibits states from prescribing or attempting to enforce any "control or prohibition respecting" a fuel characteristic or component for which EPA has adopted a control or prohibition, unless the state control is identical to the federal control. *(Commentator 4)*

Response: The Department developed this proposal based on the recommendations of the Southwestern Pennsylvania Ozone Stakeholders Working Group (Stakeholders) – a group of which EPA Region III was an active member. There were dissenting opinions written regarding the final fuel program recommendation, but none mentioned the possibility that Pennsylvania might be preempted from adopting such a control program.

Further, the Department fashioned this proposal after regulations promulgated and approved in four other states – Missouri, Indiana, Texas, and Michigan. Indiana and Texas have both written regulations to provide for two compliant fuels, exactly as Pennsylvania has proposed. Indiana's regulation was deemed so non-controversial, that

the federal EPA published the rule as a direct final action in the February 9, 1996 Federal Register. Texas's rules were adopted and became effective in May of 1994. The other two states have written their regulations as low RVP requirements, but exempt federal RFG from compliance with the requirements. Missouri's program is federally approved, and it is the Department's understanding that Michigan's will be as well. The Department understands that there may be a procedural difference between these two approaches, but does not believe that any real inconsistencies between the two exist. Both allow for low RVP and federal RFG to be supplied to the control areas, and both approaches incorporate a method of enforcement that has been approved by EPA on the regional and federal level.

If a supplier chooses to deliver RFG into the Pittsburgh-Beaver Valley area, then that supplier will be responsible for ensuring its compliance with applicable federal requirements.

Most importantly, both approaches provide for cleaner-burning gasoline to be supplied to an area that has identified an ongoing problem attaining and maintaining the health-based standard for ground-level ozone. The Stakeholders decided that a clean fuels program was needed in Southwestern Pennsylvania because such a program achieves fast, reliable reductions in ozone and ozone precursors. The Department firmly believes that this view is correct and appropriate. Allowing for both 7.8 psi RVP *and* federal RFG provides the opportunity for gasoline suppliers to make a market-based decision in regard to what fuel they provide; this option to choose will save consumers money. Pennsylvania's program allows for suppliers who may sell only one of the compliant fuels to supply the Pittsburgh area with their product. This will encourage competition while providing gasoline to the area that is substantially cleaner than the conventional gasoline that is presently being sold.

9. Comment: Approval of this proposal as a mechanism to achieve the National Ambient Air Quality Standards (NAAQS) for ground level ozone may not be possible because the RFG provisions in the proposal are not necessary to achieve the NAAQS for ground level ozone. The volatile organic compound reductions could be found to be necessary, but the additional benzene and toxics reductions that RFG provides do not pertain to the ozone NAAQS which this rule is designed to achieve. *(Commentator 4)*

Response: Similar programs have been developed in Indiana, Missouri, Texas, and Michigan. This proposal was developed based on the recommendations

of the Stakeholders. The Stakeholders met for nearly one year, and in that time, exhaustively reviewed all the emission control options deemed reasonable to move the Pittsburgh area toward attainment of the health-based standard for ground level ozone. A clean fuels option, allowing for both 7.8 psi low RVP and federal RFG is necessary to attain the NAAQS - in fact the clean fuels program was judged to be important enough to be included in the "Immediate Recommendations" section of the Stakeholders' final report.

10. Comment: Concerns were expressed regarding both the enforceability of this proposal and whether Pennsylvania is claiming appropriate emission reduction credits in the State Implementation Plan (SIP). The commentator is concerned that Pennsylvania is planning to receive credit in the SIP based on all the gasoline in the area meeting the volatility standard of 7.8 psi, even though the only volatility requirement that RFG is required to meet is a 8.3 psi per-gallon maximum. To claim such credits in the SIP, Pennsylvania would need to make a reasonable showing that it would have a means of proving and enforcing against violations of the 7.8 RVP standard. *(Commentator 4)*

Response: The Department's attainment demonstration will be based on the reductions required by this regulation. The Pennsylvania Air Pollution Control Act provides sufficient enforcement measures to ensure that the regulation is fully implemented.

11. Comment: In response to the Department's request for comments on the possibility of incorporating ramp-up and ramp-down periods, the commentator recommends against defining such periods in the regulation so that parties in the distribution system can make their own decisions how to best comply in the most cost-effective and efficient manner. *(Commentator 5)*

Response: The Department agrees.

12. Comment: In response to the Department's request for comments on the possibility of implementing a program to generate emission reduction credits by selling RFG, the commentator recommends against such a program as the complexity and cost of such a program would make it unworkable. *(Commentator 5)*

Response: The Department agrees and will not develop such a program.

13. Comment: The commentator proposes that the Department should adopt an enforcement policy similar to the one used by the state of Michigan in the Detroit area where a comparable fuels program is run.
 (*Commentator 5*)
- Response: The Department will implement this regulation in the same manner as other SIP approved requirements. Enforcement will be consistent with the Department's *Thoughtful and Thorough Enforcement Policy* dated September 21, 1995.
14. Comment: The requirement for each person in the gasoline distribution network to retain records containing compliance information for two years as outlined in section 126.303 (*Note: revised section 126.302*) should either be changed to be consistent with the federal record retention time or be eliminated. (*Commentator 8*)
- Response: The requirement outlined in the proposed rule is that records be retained for at least two years. Therefore, affected parties may choose to retain records for five years to be consistent with federal requirements. In the past, concerns have been expressed regarding storage space at retail locations, and that is why the minimum of two years is specified.
15. Comment: The proposed rule contains provisions that are inconsistent and more stringent than federal rules. This is contrary to the intent of the Regulatory Basics Initiative. (*Commentator 8 and 9*)
- Response: This rule is not more stringent than required by the Clean Air Act. As discussed in the Stakeholder Report, the rule is reasonably necessary for Pennsylvania to achieve the NAAQS for ozone. This rule is being developed as part of the Pennsylvania ozone attainment demonstration for the Pittsburgh area.

Pennsylvania Department of Environmental Protection

Pennsylvania Homepage

[Home](#)

[Search](#)

[NewsRoom](#)

[Update](#)

[Ask DEP](#)

[County Notebooks](#)

[Public Participation](#)

[What's New](#)



Appendix D

"Thoughtful and Thorough Enforcement"

**By James M. Seif, Secretary
and
Terry Bossert, Chief Counsel**

Department of Environmental Protection

September 21, 1995

Recently, some questions have been asked both inside and outside the Department of Environmental Protection about the role traditional enforcement actions play as the Ridge Administration moves to adopt new tools such as compliance assistance and pollution prevention to protect our environment.

Adopting additional ways to help businesses and individuals does not eliminate DEP's role as a regulatory agency. Enforcement is still and will remain an important responsibility.

Expanding on what Gov. Tom Ridge said about enforcement, DEP Secretary James M. Seif and Chief Counsel Terry Bossert recently put together the following thoughts on the proper role of enforcement at DEP.

Enforcement is and will likely remain an important and powerful tool in DEP's quest to achieve compliance with environmental laws and regulations. Like all powerful tools, however, it must be used with care and when it's most effective. While we hope that other tools such as compliance assistance, training programs and outreach will result in compliance, we must not hesitate to use traditional enforcement measures when necessary and appropriate.

In most cases, the goal of enforcement will be to help ensure either current or future compliance. In cases where the violator acts deliberately or with indifference to the law or

falsifies reports or information, punishment is warranted.

In order to ensure that these objectives are met, we will make enforcement decisions pass the "Test of the Two Ts." Enforcement action should be undertaken only after THOUGHTFUL consideration of the situation, not as an automatic, or a knee-jerk, reaction. And then, once undertaken, the pursuit of an action should be THOROUGH until we achieve our desired result.

THOUGHTFUL

Before any enforcement action is initiated, appropriate program and legal staff should carefully consider the facts, the law, and the options and select the enforcement action properly suited to the situation and best designed to produce compliance. While no list can be complete, being thoughtful includes considering questions like:

- Have other efforts to encourage compliance been reasonably pursued before taking enforcement? Enforcement will rarely be the first step, unless violations are deliberate.
- Are there other compliance tools that should be combined with enforcement to achieve the best results? For example, can we suggest ways to prevent a reoccurrence, such as physical containment, or should we require changes in the process, such as through employee training?
- Are we taking this action because "we always do(did) it this way"? If so, rethink the action NOW.
- Is the enforcement tool selected appropriate and proportional to the violation and the circumstances surrounding it? Consider such things as harm to the environment and the sophistication of the violator.
- Is the enforcement tool selected the one most likely to result in future compliance by this violator and others?
- Is our determination of a violation based on accepted interpretations of the law (within DEP) rather than personal or regional theories? New theories are appropriate for internal discussion but should not be used in enforcement before being accepted as DEP policy.
- Does an analysis of the facts and law suggest that we have a reasonable prospect of prevailing in any appeal or litigation?
- Was the violation voluntarily reported by the facility or discovered as the result of a voluntary compliance audit?
- If we are compelling action by the violator, is our action technically and scientifically sound and accepted as DEP policy?
- What is the prior compliance history of the entity, both good and bad? Good performance should not be punished. A poor history should not be rewarded and suggests enforcement may be needed to get the violator's attention.
- Is the violation in a new program or related to newly changed requirements? A learning curve should be anticipated in new programs.
- Is new or innovative technology being used that will have long- range environmental benefits once the bugs are worked out? More tolerance may be justified to encourage such technology to get a better end result.
- How quickly and aggressively did the entity act to correct the violation? Likewise,

how long did the violation last?

- Has the violation caused significant environmental harm or significant risk to public health?
- Is a penalty warranted and will it serve a useful purpose toward compliance? Penalties should never be automatic unless specifically required by statute, regulation or a written policy approved by the Secretary.
- Do the circumstances suggest that punishment or deterrence are factors to consider that may encourage future compliance? Again the degree of willfulness, indifference and falsification become factors.
- If a penalty is appropriate, can a real and immediate environmental benefit be obtained by a project in lieu of some or all of the penalty? The key here is real environmental improvement.
- Has the entity realized a tangible financial benefit as a consequence of the violation?
- If the violator is a municipal government, will the environment and the taxpayers be better off with the action planned? We should be especially mindful of assisting local governments to achieve compliance. Money moving from the local treasury to the state treasury does not improve the environment or benefit the taxpayers. Money spent on local improvements may do both.

Many of the questions listed here that relate to willful activity, past compliance history, environmental harm and other mitigation factors are either already included in our environmental laws and policies or are good common sense.

THOROUGH

If an enforcement action is worth taking, it is worth pursuing to the end. If we are not prepared to take the necessary steps to follow through, then perhaps enforcement is the wrong tool. It does not help the environment or the cause of sound government by taking action just to grab headlines; we have to follow through.

While we will always be open-minded and prepared to consider options to achieve compliance, once we start an enforcement action, we will pursue it to the end. If we are thoughtful before we act, there should be no reason not to be thorough afterward. Being thorough means:

- Thoughtfulness is not an excuse for inaction or delay. Analyze the situation and, if appropriate, act. Do not allow the violation to become so old our action looks like an after thought.
- Once the action is started, keep up the pace, don't allow things to become stale. Don't allow the enforcement action to be overtaken by subsequent events that make it more difficult to prevail.
- Allow reasonable opportunity for negotiation and reasonable "second chances" for compliance when appropriate, but do not allow negotiations to drag on when no progress is being made. While we prefer to reach agreements for cooperative compliance, it will not be possible to do so in all cases.
- Never allow the Department's lack of a timely, complete or accurate response compromise an enforcement action. We will never allow a violator to use us as an

excuse for his failure to act.

- If penalties are appropriate they will not only be assessed, they will be collected.
- When administrative orders are issued we will seek timely enforcement of them in the courts if necessary. We will not place ourselves in a position of weakness because we waited too long to seek the court's assistance.
- If orders or CO&As (consent orders and agreements) establish deadlines or milestones we will monitor compliance. If dates are missed, we will again be thoughtful. If there was a good reason, we should again consider all our tools. If there was not a good reason, we will proceed with the next enforcement step. We should not allow requirements of orders or CO&As to become so stale that we need to backtrack or start over.

Above all being Thoughtful and Thorough means using good judgment, sound science and common sense in all aspects of enforcement.



Pennsylvania Department of Environmental Protection

Pennsylvania Homepage

Home Search NewsRoom Update Ask DEP County Notebooks Public Participation What's New

[DEP Home](#) / [Search](#) / [NewsRoom](#) / [Update](#) / [Ask DEP](#) / [County Notebooks](#)
[Public Participation](#) / [What's New](#)

<a href="mailto:webmaster@Last Modified on 07/15/97 09:35:53.


Pennsylvania Department of Environmental Protection

Pennsylvania Homepage

[Home](#)[Search](#)[NewsRoom](#)[Update](#)[Ask DEP](#)[County Notebooks](#)[Public Participation](#)[What's New](#)

Grouped by Confidence Subject

excite for web servers found documents about: **Thoughtful and Thorough Enforcement**

 [New Search](#)

 - higher confidence,  - lower confidence; click icons to find similar documents

84% **TAKING THE NEXT STEP: THOROUGH ENFORCEMENT**

Summary: dep.state.dep.state. Too often in the past, fines and penalties were the only tool used by DEP.

82% **THOUGHTFUL AND THOROUGH ENFORCEMENT**

Summary: Thoughtful and Thorough Enforcement. Enforcement is and will likely remain an important and powerful tool in DEP's quest to achieve compliance with environmental laws and regulations. Like all powerful tools, however, it must be used with care and when it's most effective. If there was a good reason, we should again consider all our tools. If there was not a good reason, we will proceed with the...

82% **House Resolution 420 - Appendix D - Thoughtful and Thorough Enforcement**

Summary: The key here is real environmental improvement.. If the violator is a municipal government, will the environment and the taxpayers be better off with the action planned? We will never allow a violator to use us as an excuse for his failure to act. If penalties are appropriate they will not only be assessed, they will be collected. If there was not a good reason, we will proceed with the next...

82% **House Resolution 420 - Introduction**

Summary: On Using Fines and Penalties to Fund Environmental. Cleanups and Initiatives Pursuant to House Resolution 420. Cover Letter from Secretary Seif Executive Summary House Resolution 420 General Role of Fines and Penalties Fines As A Source of Cleanup Funds Other Sources of DEP Funds Referrals to the Attorney General Compliance and Beyond Future Directions with Recommendations Appendices...

81% **December 13, 1996 Update**

Summary: EPA REGION III SAYS ENFORCEMENT STILL PART OF THE MIX. 5 with representatives of Pennsylvania's DEP and environmental officials from other Region III states to discuss the state/federal enforcement partnership. The states asked Stahl whether the EPA

document should be read as guidance to the states for performance partnerships and other purposes. Stahl said that the document was internal...

79% Many Steps to Protecting the Environment

Summary: Other Steps DEP Takes to Protect the Environment. State law requires resource recovery facilities, landfills, surface mining operations and many other facilities to get permits from the Department of Environmental Protection before they operate. In this manner they are designed to protect the environment from the very beginning. DEP also relies on the public to report environmental problems so...

78% November 8, 1996 Update

Summary: LETTER FROM SECRETARY JAMES M. SEIF. Our philosophy is also expressed in our new mission statement.[dep.state](#). DEP Home / Search / Update / Ask DEP / What's New / Hot Topics.

77% Comments on Issues/Programs

Summary: Pennsylvania Gas Association, March 8, 1996. DEP Environmental Cleanup Program, March 29, 1996. Pennsylvania AAA, April 12, 1996. March 25, 1996. Environmental Spotlight (March 1995).

76% Secretary Seif

Summary: 1996 Department of Environmental Protection Annual Report. Opening Remarks by James M. Seif, Secretary, Department of Environmental Protection, Before the Senate Appropriations Committee, March 5, 1997. Opening Remarks by James M. Seif, Secretary, Department of Environmental Protection, Before the House Appropriations Committee February 25, 1997. "Is Pennsylvania's Recycling Program in...

74% PA DEP - Update March 7, 1997

Summary: Recommendations: For the sake of air quality in Pennsylvania, DEP and EPA must work together. Monthly conferences between EPA and Bureau of Air Quality Central Office with appropriate regional office participation should be held so that EPA does not have to carry on 8 calls each month with Pennsylvania regions and counties. EPA Region III should work towards having the interim guidance (with...

71% Report of the Inspector General Audit Workgroup

Summary: Extensive data was collected through interviews and written reports from DEP, EPA and the IG. DEP will request EPA assistance when needed. EPA may not always meet the enforcement requirements of the T&A Guidance either, but probably documents its actions more thoroughly. Regardless of how the information was distributed, some of the problems identified in the audit report require resolution.

Pennsylvania Department of Environmental Protection

Pennsylvania Homepage

[Home](#) | [Search](#) | [NewsRoom](#) | [Update](#) | [Ask DEP](#) | [County Notebooks](#) | [Public Participation](#) | [What's New](#)

(Note: This article by Environmental Protection Secretary James M. Seif is one of a series DEP is providing between Earth Day, April 22, and Rachel Carson's birthday, May 27, to demonstrate what we mean by our theme, "Taking the Next Step." Comments are welcome to Secretary Seif at 717 787-2814 or by e-mail to Seif.James@A1.dep.state.pa.us. DEP's web site address is: <http://www.dep.state.pa.us>.)

TAKING THE NEXT STEP: THOROUGH ENFORCEMENT

Even under the Department of Environmental Protection's new approach to achieving compliance with environmental rules and regulations, fines and penalties will remain an important and powerful tool for those who willfully disregard those laws. Like all powerful tools, however, they must be used carefully and when it will get the right result.

While DEP is aggressively working to make other assistance, training programs and outreach available to our citizens and businesses, it will not hesitate to use traditional enforcement measures like fines and penalties when necessary and appropriate.

Too often in the past, fines and penalties were the only tool used by DEP. This inflexible approach lost sight of the ultimate objective: protecting and preserving our fragile environment.

To ensure that environmental objectives are met, department enforcement decisions must pass the "Test of Two Ts." Enforcement actions will be taken only after THOUGHTFUL consideration of the results we want to achieve, not as an automatic, knee-jerk reaction. And then, once undertaken, the pursuit of an action should be THOROUGH until we achieve our desired result.

THOUGHTFUL. Fines and penalties will rarely be the first step, unless violations are deliberate or cause serious harm to the environment.

While no list can be complete, being thoughtful includes considering questions such as these: Have other efforts to encourage compliance been reasonably pursued before taking enforcement? Can compliance tools be combined with enforcement to achieve the best results? Was the violation reported by the facility or discovered as a result of a voluntary compliance audit?

The department also will be especially mindful of assisting local governments in achieving compliance. Penalty money moving from the local treasury to the state treasury does not, by itself, ensure environmental improvement and certainly provides no benefit to taxpayers. Money spent on local improvements may do both.

THOROUGH. If an enforcement action is worth taking, it is worth pursuing to the end. Without taking the necessary steps to follow through, enforcement is not the most effective tool.

In the past, rapid-fire press releases about proposed enforcement actions were often followed by years of inaction to settle the case. Being thorough means:

- * Ensuring that thoughtful is not an excuse for inaction or delay.
- * Not allowing negotiations to drag on. Allow reasonable opportunity for negotiation and reasonable "second chances" for compliance, but progress in negotiations is essential.
- * Never allowing the lack of a timely, complete or accurate response compromise an enforcement action.
- * Not only assessing penalties, but collecting them as well.
- * Monitor compliance with consent orders and agreements. Deadlines must not slip or become so stale that it is necessary to backtrack or start over.

Above all, being thoughtful and thorough means using good judgment, sound science and common sense in all aspects of enforcement so that, at the end of the process, Pennsylvania's environment is the ultimate winner.

###

Pennsylvania Department of Environmental Protection						Pennsylvania Homepage	
Home	Search	NewsRoom	Update	Ask DEP	County Notebooks	Public Participation	What's New

[DEP Home](#) / [Search](#) / [NewsRoom](#) / [Update](#) / [Ask DEP](#) / [County Notebooks](#)
[Public Participation](#) / [What's New](#)

ConLast Modified on 03/06/97 14:51:41.

Pennsylvania Department of Environmental Protection

Pennsylvania Homepage

[Home](#)[Search](#)[NewsRoom](#)[Update](#)[Ask DEP](#)[County Notebooks](#)[Public Participation](#)[What's New](#)

Thoughtful and Thorough Enforcement

By Secretary James M. Seif and Chief Counsel Terry Bossert Department of Environmental Protection

Sept. 21, 1995

Recently, some questions have been asked both inside and outside the Department of Environmental Protection about the role traditional enforcement actions play as the Ridge Administration moves to adopt new tools such as compliance assistance and pollution prevention to protect our environment.

Adopting additional ways to help businesses and individuals does not eliminate DEP's role as a regulatory agency. Enforcement is still and will remain an important responsibility.

Expanding on what Gov. Tom Ridge said about enforcement, DEP Secretary James M. Seif and Chief Counsel Terry Bossert recently put together the following thoughts on the proper role of enforcement at DEP.

Enforcement is and will likely remain an important and powerful tool in DEP's quest to achieve compliance with environmental laws and regulations. Like all powerful tools, however, it must be used with care and when it's most effective. While we hope that other tools such as compliance assistance, training programs and outreach will result in compliance, we must not hesitate to use traditional enforcement measures when necessary and appropriate.

In most cases, the goal of enforcement will be to help ensure either current or future compliance. In cases where the violator acts deliberately or with indifference to the law or falsifies reports or information, punishment is warranted.

In order to ensure that these objectives are met, we will make enforcement decisions pass the "Test of the Two Ts." Enforcement action should be undertaken only after THOUGHTFUL consideration of the situation, not as an automatic, or a knee-jerk, reaction. And then, once undertaken, the pursuit of an action should be THOROUGH until we achieve our desired result.

THOUGHTFUL

Before any enforcement action is initiated, appropriate program and legal staff should carefully consider the facts, the law, and the options and select the enforcement action properly suited to the situation and best designed to produce compliance. While no list can be complete, being thoughtful includes considering questions like: • Have other efforts to encourage compliance been reasonably pursued before taking enforcement? Enforcement will rarely be the first step, unless violations are deliberate. • Are there other compliance tools that should be combined with enforcement to achieve the best results? For example, can we suggest ways to prevent a reoccurrence, such as physical containment, or should we

require changes in the process, such as through employee training? · Are we taking this action because "we always do(did) it this way"? If so, rethink the action NOW. · Is the enforcement tool selected appropriate and proportional to the violation and the circumstances surrounding it? Consider such things as harm to the environment and the sophistication of the violator. · Is the enforcement tool selected the one most likely to result in future compliance by this violator and others? · Is our determination of a violation based on accepted interpretations of the law (within DEP) rather than personal or regional theories? New theories are appropriate for internal discussion but should not be used in enforcement before being accepted as DEP policy. · Does an analysis of the facts and law suggest that we have a reasonable prospect of prevailing in any appeal or litigation? · Was the violation voluntarily reported by the facility or discovered as the result of a voluntary compliance audit? · If we are compelling action by the violator, is our action technically and scientifically sound and accepted as DEP policy? · What is the prior compliance history of the entity, both good and bad? Good performance should not be punished. A poor history should not be rewarded and suggests enforcement may be needed to get the violator's attention. · Is the violation in a new program or related to newly changed requirements? A learning curve should be anticipated in new programs. · Is new or innovative technology being used that will have long-range environmental benefits once the bugs are worked out? More tolerance may be justified to encourage such technology to get a better end result. · How quickly and aggressively did the entity act to correct the violation? Likewise, how long did the violation last? · Has the violation caused significant environmental harm or significant risk to public health? · Is a penalty warranted and will it serve a useful purpose toward compliance? Penalties should never be automatic unless specifically required by statute, regulation or a written policy approved by the Secretary. · Do the circumstances suggest that punishment or deterrence are factors to consider that may encourage future compliance? Again the degree of willfulness, indifference and falsification become factors. · If a penalty is appropriate, can a real and immediate environmental benefit be obtained by a project in lieu of some or all of the penalty? The key here is real environmental improvement. · Has the entity realized a tangible financial benefit as a consequence of the violation? · If the violator is a municipal government, will the environment and the taxpayers be better off with the action planned? We should be especially mindful of assisting local governments to achieve compliance. Money moving from the local treasury to the state treasury does not improve the environment or benefit the taxpayers. Money spent on local improvements may do both.

Many of the questions listed here that relate to willful activity, past compliance history, environmental harm and other mitigation factors are either already included in our environmental laws and policies or are good common sense.

THOROUGH

If an enforcement action is worth taking, it is worth pursuing to the end. If we are not prepared to take the necessary steps to follow through, then perhaps enforcement is the wrong tool. It does not help the environment or the cause of sound government by taking action just to grab headlines; we have to follow through.

While we will always be open-minded and prepared to consider options to achieve compliance, once we start an enforcement action, we will pursue it to the end. If we are thoughtful before we act, there should be no reason not to be thorough afterward. Being thorough means: · Thoughtfulness is not an excuse for inaction or delay. Analyze the situation and, if appropriate, act. Do not allow the violation to become so old our action looks like an after thought. · Once the action is started, keep up the pace, don't allow things to become stale. Don't allow the enforcement action to be overtaken by subsequent events that

make it more difficult to prevail. · Allow reasonable opportunity for negotiation and reasonable "second chances" for compliance when appropriate, but do not allow negotiations to drag on when no progress is being made. While we prefer to reach agreements for cooperative compliance, it will not be possible to do so in all cases. · Never allow the Department's lack of a timely, complete or accurate response compromise an enforcement action. We will never allow a violator to use us as an excuse for his failure to act. · If penalties are appropriate they will not only be assessed, they will be collected. · When administrative orders are issued we will seek timely enforcement of them in the courts if necessary. We will not place ourselves in a position of weakness because we waited too long to seek the court's assistance. · If orders or CO&As (consent orders and agreements) establish deadlines or milestones we will monitor compliance. If dates are missed, we will again be thoughtful. If there was a good reason, we should again consider all our tools. If there was not a good reason, we will proceed with the next enforcement step. We should not allow requirements of orders or CO&As to become so stale that we need to backtrack or start over.

Above all being Thoughtful and Thorough means using good judgment, sound science and common sense in all aspects of enforcement.

Pennsylvania Department of Environmental Protection

Pennsylvania Homepage

[Home](#) [Search](#) [NewsRoom](#) [Update](#) [Ask DEP](#) [County Notebooks](#) [Public Participation](#) [What's New](#)

[DEP Home](#) / [Search](#) / [NewsRoom](#) / [Update](#) / [Ask DEP](#) / [County Notebooks](#)
[Public Participation](#) / [What's New](#)

Last Modified April 30, 1996

